

Appl. No 10/660,922
Amdt. Dated August 29 2005
Reply to office action of August 17, 2005

REMARKS/ARGUMENTS

In the Office Action regarding the amendment filed 6/10/05 the examiner objects to the amendment of figure 1 and states "The amendment to figure 1 contains new matter." Applicant respectfully requests this figure amendment be admitted as it does not contain new matter for the following reason: the change to figure 1 corrects an obvious drafting error. The drafting error correction moves the connection point for the cable attachment of the double rod end seedling tray positioner (item 192) from a location near the end of an arm of the outer seedling tray holder to near the attachment point of the arm. This is an obvious error because; as well known in the art, in the manufacture of applicant's invention an attachment near the end of an arm may cause torsional stresses and contribute to fatigue failures. The reason for correcting this error is to assist the public by showing good practice in manufacture and does not affect the subject of the invention. The finding of new matter is therefore respectfully requested to be removed for these reasons and the amended figure allowed.

In the Office Action, claims 1-4, 6-8, 13-16 are objected to because of an informality. The informalities have been corrected in this amendment and these claims are respectfully requested to be allowed.

In the Office Action the Examiner further indicates claims 1, 2, 9, 13, and 14 are rejected under 35 U.S. C. 103(a) as being unpatentable over Williames (6,527,986) in view of Boulding et al. (5,860,372). The rational for this rejection includes that "Bouldin et al. teaches that it is known in the art for a seedling handling apparatus to use a tray-handling device that allows the device to handle various sized trays (col 2, lines 7-13)." The rational continues in the "Response to Arguments" that "Applicant argues that Bouldin et al. does not teach that it is known in the art for a seedling handling apparatus to use a tray-handling device that allows the device to handle various sized trays as set forth by the examiner. Applicant further argues that Bouldin et al., teaches a device for removing seedlings from a first tray to a second tray. The examiner agrees with applicant's discussion on the device of Bouldin et al., but notes that: "Bouldin et al., suggests modifying a planting apparatus (emphasis added) to be adaptable to various sized and type trays. This suggestion is in addition to the disclosed device and in addition to other

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desired modifications which is why Bouldin et al., states ‘Further it would be desirable to develop...’” The applicant respectfully traverses this rejection below.

The rejection states “Bouldin et al. teaches that it is well known in the art for a seedling handling apparatus to use a try-handling device that allows the device to handle various sized trays (col 2 lines 7-13).” This referenced sentence of present interest contained in Bouldin et al. (col 2, lines 7-13) states “It would be desirable to develop a plant transplant apparatus and method which can quickly and accurately transplant plants from a seedling tray to a larger tray.” This sentence is contained in a section of the patent entitled “BACKGROUND OF THE INVENTION.” The USPTO document “A Guide to Filing A Non-Provisional (Utility) Patent Application” states:

“This section should also contain a description of information known to you, including references to specific documents, which are related to your invention. It should contain, if applicable, references to specific problems involved in the prior art (or state of technology) which your invention is drawn toward.”

The Bouldin statement then is a reference to a specific problem in the prior art to which the Bouldin invention is drawn toward. This invention is “a plant transplant apparatus and method which can quickly and accurately transplant plants from a seedling tray to a larger tray”. The applicant asserts that this is not a teaching that it is well known in the art for a seedling handling apparatus to use a tray-handling device that allows the device to handle various sized trays, but rather a teaching to transplant plants from one tray to a larger tray. The applicant notes it is well known that differing sizes of trays exist.

The prima facie case of obviousness requires, according to MPEP 2142, that “First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. There is no teaching in either Bouldin et al. or Williames to compel one to modify the Bouldin et al. reference from “transplant plants from a seedling tray to a larger tray” to “modifying a planting apparatus to be adaptable to various sized and type trays.”

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The MPEP 2142 further states "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." The examiner notes in the response to arguments statement that:

"...Bouldin et al., suggests modifying a planting apparatus to be adaptable to various sized and type trays. This suggestion is in addition to the disclosed device and in addition to other desired modifications which is why Bouldin et al., states 'further , it would be desirable to develop...?'"

This statement provides an opinion but does not provide a convincing line of reasoning as to why one would interpret "transplant plants from a seedling tray to a larger tray" to "modifying a planting apparatus to be adaptable to various sized and type trays." Applicant therefore asserts the prima facie case of obviousness has not been established as no convincing line of reasoning to support this opinion has been shown.

Applicant further notes that even if a convincing line of reasoning existed to interpret the (col 1 lines 7-13) sentence from Bouldin et al. as applying to handling varying sizes or seedling spacing then, considering the fact, not in dispute, that Bouldin et al. does not disclose such a device, the (col 1 lines 7-13) sentence from Bouldin et al sentence would be objective evidence of a long felt but unsolved need in the art, which has not been developed by others. Since Bouldin et al. was filed on September 23, 1996 this need has presumably existed for nearly a decade.

The MPEP 2141 notes that "Objective evidence or secondary considerations such as unexpected results, commercial success, long-felt need, failure of others, (emphasis added) copying by others, licensing, and skepticism of experts are relevant to the issue of obviousness and must be considered in every case in which they are present." The applicant notes that the statement in Bouldin et al. (col 1 lines 7-13), if interpreted as suggested by the examiner,

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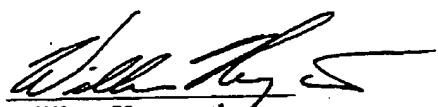
establishes proof that applicant's invention meets a long-felt need that others have failed to address.

Claims 1, 2, 9, 13, and 14, in view of the above, are respectfully requested to be allowed.

In the Office Action the examiner indicates claims 3, 4, 6-8, 15, and 16 are objected to as being dependent on a rejected base claim. Applicant respectfully submits the claims are now dependent on an allowable base claim and this objection is respectfully requested to be removed.

Applicant submits that all objections and rejections of figures and claims have been addressed and applicant's application has been shown to be allowable and that action is respectfully requested.

Respectfully submitted:



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